

**EBY SUBDIVISION  
TWO-LOT FIRST MINOR SUBDIVISION**

**STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS**

**CASE PLANNER:** Renee Lemon *RL*

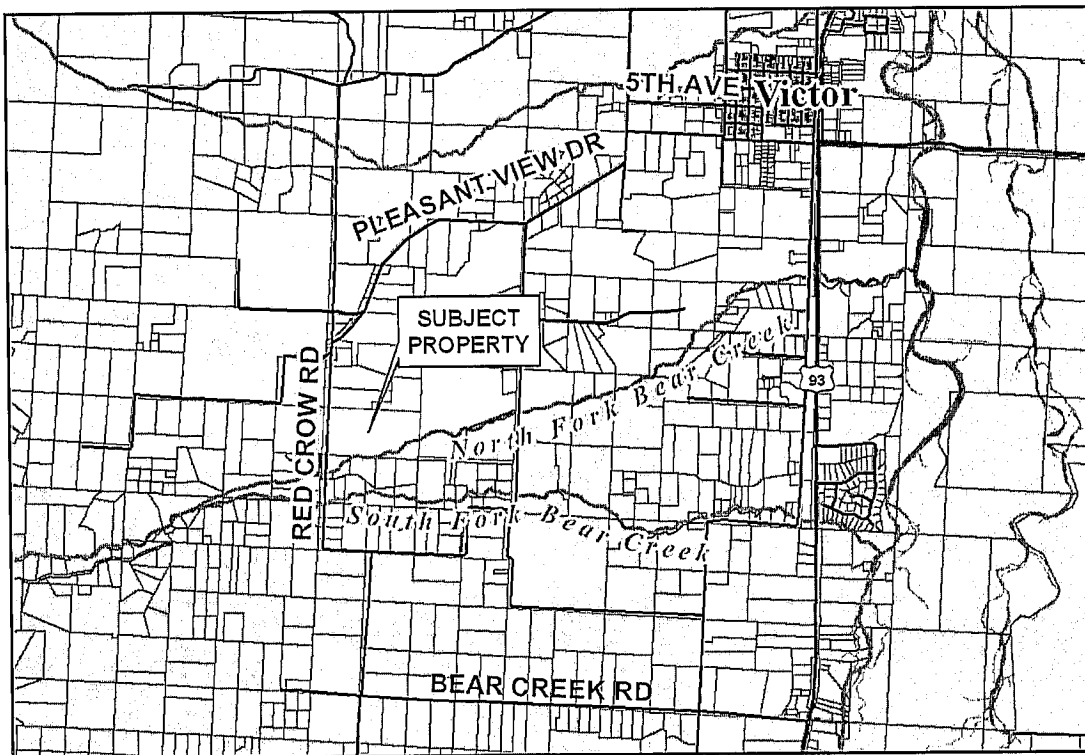
**REVIEWED/  
APPROVED BY:** John Lavey *JL*

**PUBLIC MEETINGS:** BCC Public Meeting: 9:30 a.m. November 29, 2007  
Deadline for BCC action (35 working days): December 6, 2007

**SUBDIVIDER:** Tallwoods Development Corporation  
584 Indian Prairie Loop  
Victor, MT 59875

**REPRESENTATIVE:** William E. Burnett  
Professional Consultants, Inc. (PCI)  
1713 N. 1<sup>st</sup> Street  
Hamilton, MT 59840

**LOCATION OF REQUEST:** The property is located southwest of Victor off Red Crow Road. (See Map 1)



**Map 1: Location Map**  
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION  
OF PROPERTY:**

N2SW4 of Section 2 and NE4SE4 of Section 3, T7N, R21W, P.M.M.,  
Ravalli County, Montana.

**APPLICATION  
INFORMATION:**

The subdivision application was determined sufficient on October 16, 2007. Agencies were notified of the subdivision on January 23, 2007 and November 14, 2007. Comments received from agencies are Exhibits A-1 through A-8 of the staff report. **This subdivision is being reviewed under the Ravalli County Subdivision Regulations (RCSR) amended May 24, 2007.**

**LEGAL NOTIFICATION:**

Notice of the project was posted on the property and adjacent property owners were notified by regular mail dated November 14, 2007. No public comments have been received to date.

**DEVELOPMENT  
PATTERN:**

Subject property:	Low Density Residential/Pasture
North:	Low Density Residential
South:	Low Density Residential
East:	Low Density Residential
West:	Low Density Residential

**INTRODUCTION**

Currently, there is one residential dwelling on the west side of the property (proposed Lot 1) that is part of a life estate. The east side of the property is being used as horse pasture. The applicant is proposing to add one additional residential dwelling to the east side of the property. The property has extensive wetlands and riparian areas associated with the North Fork of Bear Creek. The applicant mapped the wetlands and riparian areas, and is proposing no-build/alteration zones and a building envelope to protect these sensitive water features. There are no variances associated with the subdivision proposal.

*Staff recommends conditional approval of the subdivision proposal.*

## **PLANNING STAFF RECOMMENDED MOTION**

That the Eby Minor Subdivision be approved, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

## **PLANNING STAFF RECOMMENDED CONDITIONS**

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

***Notification of Proximity to Agricultural Operations.*** This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (*Section 3-2-8(b)(v), RCSR, Impacts on Agriculture*)

***Notification of Irrigation Facilities and Easement.*** Within this subdivision there is an irrigation easement, as shown on the final plat. All downstream water right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. Activities associated with the maintenance of irrigation facilities may include the operation of heavy equipment, the occasional burning of ditch vegetation, and the use of herbicides. Downstream water right holders must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance, which includes but is not limited to the placement of structures or the planting of vegetation other than grass, is expressly prohibited. (*Section 3-2-8(a) and Section 3-2-8(b)(v)(B), RCSR, Impacts on Agricultural Water User Facilities*)

***Limitation of Access onto a Public Road.*** A "no-ingress/egress" restriction exists along the Red Crow Road frontage of Lots 1 and 2, excepting the existing approach to the driveway on Lot 1 and the approved approach for Lot 2. This limitation of access may be lifted or amended only with the approval of the Board of County Commissioners. (*Section 3-2-8(b)(v), RCSR, Impacts on Local Services and Public Health and Safety*)

***Notification of Proximity to North Fork of Bear Creek.*** This subdivision is located in close proximity to the North Fork of Bear Creek. There is an inherent hazard associated with creeks, due to potential soil erosion, flooding and movement of the stream channel. It is recommended that property owners of this subdivision obtain flood insurance and that the lowest floor of all structures and utilities be located a minimum of 2.0 feet above the natural grade. (*Section 3-2-8(b)(v), RCSR, Impacts on Public Health and Safety*)

***Notification of "Very Limited" Soils.*** Within this subdivision there are areas of the property identified by the Natural Resources Conservation Service (NRCS) as potentially having soils rated as "very limited" for road construction and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat. Descriptions of the severe soils in question are included as exhibits to this document [the subdivider shall include the exhibits as attachments]. (*Section 3-2-8(b)(v), RCSR, Impacts on Public Health and Safety*)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

***Waiver of Protest to Creation of RSID/SID.*** Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community

wastewater treatment system, and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. (Section 3-2-8(b)(v), RCSR, Impacts on Local Services and Public Health and Safety)

**Living with Wildlife.** Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, black bear, mountain lion, wolf, coyote, fox, skunk, raccoon and magpie. Each lot owner shall obtain or be provided and read a copy of the brochure "Living with wildlife," available from the Montana Fish, Wildlife & Parks office in Missoula for brochures that can help homeowners "live with wildlife." Alternatively, see FWP's web site at [www.fwp.mt.gov](http://www.fwp.mt.gov). (Section 3-2-8(b)(v), RCSR, Impacts on Agriculture and Wildlife & Wildlife Habitat)

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. There is high potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners must be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens, fruit trees or orchards** are a major wildlife attractant, and fruit-bearing trees and shrubs can regularly attract bears in the fall. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or vegetable material can attract bears, skunks and other wildlife. Gardens should be fenced with one-foot of fencing material below ground level and be at least eight feet in height, in order to discourage wildlife such as deer from feeding in gardens. The top rail should be made of something other than wire to prevent wildlife from entanglement. Netting over gardens can help deter birds from eating berries. Electric fencing is necessary to effectively prevent wildlife such as bears from entering a garden or fruit tree/shrub area, but only if the fence is properly constructed and regularly monitored and maintained to ensure proper use and function. Consult with the Montana Department of Fish, Wildlife and Parks on the proper techniques to develop and maintain an effective electric fence.
- c. If stored outdoors, **garbage** should be in secure bear-resistant containers; otherwise it should be stored indoors prior to curbside pick-up or transport to a centralized garbage collection site, in order to avoid attracting wildlife such as bears and raccoon. If curbside garbage pick-up is available, garbage cans may not be set out until the morning of garbage pickup and must be brought in no later than that same evening. (Consult Montana Fish, Wildlife & Parks for information on purchasing or constructing bear-resistant trash containers or storage areas.)
- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public

safety.” Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.

- e. **Birdseed** is an attractant to bears, and outdoor birdfeeders are strongly discouraged from April 1<sup>st</sup> through the end of November. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.
- g. **Pet food and livestock feed** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, and other wildlife. **When feeding pets and/or livestock** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- h. **Barbecue grills** should be stored indoors, and permanent outdoor barbecue grills are discouraged. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- i. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.
- j. **Compost piles** can attract skunks and bears and should be avoided. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
- k. **Apiaries (bee hives)** could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
- a. These “living with wildlife” covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

**No-Build/Alteration Zones.** Healthy, naturally functioning riparian areas benefit fish and wildlife, as well as agriculture and recreation. The goal of the “no build/alteration zones” along the North Fork of Bear Creek, the unnamed tributary of the North Fork of Bear Creek, and covering the wetlands is to help preserve the water quality and functionality of these water features, protect and enhance the riparian areas, and protect property from eroding banks and possible flooding. Encouraging the development of native vegetation (including shrubs and trees)--while *discouraging* actions such as grading, planting and irrigating lawns, mowing or cutting or clearing vegetation, and livestock grazing--would help preserve the functionality of this creek, protect and improve wetland vegetation, enhance slope stability, and protect property from eroding banks and possible flooding. (*Section 3-2-8(b)(v), RCSR, Impacts on Natural Environment and Wildlife & Wildlife Habitat*)

The “No Build/Alteration Zones” are depicted on the plat. These zones, including a “buffer zone” within a minimum of 100-feet outward from each side of the North Fork of Bear Creek,

are protected by the following covenants (restrictions) to help avoid damage to the stream, its riparian areas, and wetlands, as well as enhancing these areas:

- a) No building, no new roads or alteration is allowed within the no-build/alteration zones, except for the proposed driveway crossing, as permitted by the U.S. Army Corps of Engineers.
- b) Only non-motorized access and use of the no-build/alteration zones is allowed, except for the driveway crossing and certain maintenance needs such as weed spraying.
- c) Do not cut or remove live or dead vegetation, particularly shrubs and trees from the no-build/alteration zones. Wood (i.e., fallen branches, downed trees) is an important part of fish habitat and contributes significantly to overall stream health. Wood regularly causes bed scour that creates pools where fish reside to feed and seek cover. Wood also stores sediment that is used for spawning. Dead trees also function as important wildlife nesting habitat. Exception: proper use of chemicals or other methods of control (other than mowing) for noxious weeds is allowed, and planting appropriate native riparian vegetation (trees, shrubs) is allowed.
- d) Do not plant lawns in the no-build/alteration zones. Leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.
- e) If planting is planned for this area, the goal should be to re-establish native plant species appropriate to the site.
- f) Keep livestock out of the North Fork of Bear Creek and develop off-stream watering facilities (e.g., water troughs) for livestock. If livestock graze on Lot 1, fencing shall be constructed and maintained along the wooded riparian boundary of the unnamed tributary of the North Fork of Bear Creek. If livestock graze on Lot 2, fencing shall be constructed and maintained along the wooded riparian boundary of the North Fork of Bear Creek. Use fences to keep livestock from trampling and grazing riparian vegetation along the North Fork of Bear Creek and the unnamed tributary of the North Fork of Bear Creek.
- g) It is illegal to modify the streambed or streambanks of a perennial stream without a "310" permit (Montana Natural Streambed and Land Preservation Act). Any stream crossings need to follow any and all local and/or state regulations relative to bridge/culvert construction materials/methods. Certain other actions near the river and/or creek may require state and/or federal permit(s). Contact the Ravalli Conservation District office in Hamilton for further information.
- h) In summary, allow the riparian and wetland areas within the no-build/alteration zones to remain undisturbed. Do not modify them unless such change would help return the area to a natural state.
- i) These riparian covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

**Lighting for New Construction.** To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane

through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit [www.darksky.org](http://www.darksky.org). (*Section 3-2-8(b)(v), RCSR, Impacts on Natural Environment*)

**Radon Exposure.** The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. (*Section 3-2-8(b)(v), RCSR, Impacts on Public Health & Safety*)

**Control of Noxious Weeds.** A noxious weed evaluation form has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. (*Section 3-2-8(b)(v), RCSR, Impacts on Agriculture and Natural Environment*)

**Required Posting of County-Issued Addresses for Lots within this Subdivision.** The Hamilton Rural Fire District has adopted the Fire Protection Standards, which require lot owners to post County-issued addresses at the intersection of the driveway leading to each residence and the road providing access to the lot as soon as construction on the residence begins. (*Section 3-2-8(b)(v), RCSR, Impacts on Local Services and Public Health & Safety*)

**Access Requirements for Lots within this Subdivision.** The All Valley Fire Council, which includes the Victor Rural Fire Department, has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Victor Rural Fire Department for further information. (*Section 3-2-8(b)(v), RCSR, Impacts on Local Services and Public Health & Safety*)

**Building Standards.** The All Valley Fire Council recommends that houses within this subdivision be built to International Residential Building Code (IRBC) building standards. It is recommended that any commercial buildings be constructed to meet state building code requirements. (*Section 3-2-8(b)(v), RCSR, Impacts on Local Services and Public Health & Safety*)

**Wood Stoves.** The County recommends that home owners install EPA-certified wood stoves to reduce air pollution. It is recommended that wood burning stoves not be used as the primary heat source. More information is available at <http://www.epa.gov/woodstoves/index.html>. The State of Montana offers an Alternative Energy Systems Credit for the cost of purchasing and installing a low emission wood or biomass combustion device such as a pellet or wood stove. (*Section 3-2-8(b)(v), RCSR, Impacts on Natural Environment*)

**Archeological Resources.** If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate. (*Section 3-2-8(b)(v), RCSR, Impacts on Natural Environment*)

**Amendment.** Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. *(Section 3-2-8(b)(v), RCSR, Impacts on all six criteria)*

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. *(Section 3-2-8(b)(v), RCSR, Impacts on Local Services and Public Health and Safety)*
4. The subdivider shall provide evidence with the final plat submittal that they have applied for a County-issued address for the new lot. *(Section 3-2-8(b)(v), RCSR, Impacts on Local Services and Public Health & Safety)*
5. Prior to final plat approval, the subdividers shall provide a letter from the Victor Rural Fire Department stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for the additional lot. Alternatively, the subdividers may provide evidence that \$500 has been contributed to the Victor Rural Fire Department with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Section 3-2-8(b)(v), RCSR, Impacts on Local Services and Public Health & Safety)*
6. The following statement shall be shown on the final plat: "The All Valley Fire Council, which includes the Victor Rural Fire Department, has adopted Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Victor Rural Fire Department for further information". *(Section 3-2-8(b)(v), RCSR, Impacts on Local Services and Public Health & Safety)*
7. The subdivider shall submit a letter or receipt from the Victor School District stating that they have received a contribution (to be determined at the Commissioner meeting) prior to final plat approval. *(Section 3-2-8(b)(v), RCSR, Impacts on Local Services)*
8. The subdivider shall submit \$500 to the Ravalli County Treasurer's Office to be deposited into an account for Public Safety Services (Sheriff, E-911, DES) prior to final plat approval. *(Section 3-2-8(b)(v), RCSR, Impacts on Local Services and Public Health and Safety)*
9. A building envelope shall be designated on the final plat and shall not encroach on the no-build/alterations zones. *(Section 3-2-8(b)(v), RCSR, Impacts on Natural Environment)*
10. Prior to final plat approval, the applicant shall provide permits from DNRC for the water rights to the two ponds and permits from FWP for any fish in the ponds or evidence that the permits are not required. *(Section 3-2-8(b)(v), RCSR, Impacts on Natural Environment)*

#### **FINAL PLAT REQUIREMENTS (RAVALLI COUNTY SUBDIVISION REGULATIONS)**

1. A statement from the project surveyor or engineer prior to final plat approval outlining how each final plat requirement or condition of approval has been satisfied. *(Section 3-4-4(a))*



2. One paper and two mylar 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats (ARM 8.94.3003). (One paper copy may be submitted for the first proofing.) The final plat shall conform to the preliminary plat decision. The features listed in Section 3-4-4(a)(ii) are required on the Final Plat. Following are specific features related to this subdivision:
  - a) Existing and proposed utility easements, as shown on the preliminary plat, shall be shown on the final plat.
  - b) The 10-foot wide irrigation easement shall be shown on the final plat, as shown on the preliminary plat.
  - c) The final plat shall show a no-ingress/egress zone along the Red Crow Road frontage of Lots 1 and 2, excepting the existing driveway to the residence on Lot 1 and the approved approach to Lot 2.
  - d) The no-build/alteration zones shall be shown on the final plat, as proposed in the preliminary plat.
3. The original copy of the preliminary plat decision shall be submitted with the final plat submittal. (Section 3-4-4(a))
4. Any variance decisions shall be submitted with the final plat submittal. (None have been requested at this time) (Section 3-4-4(a))
5. Copies of extensions of the preliminary plat approval period shall be submitted with the final plat submittal. (Section 3-4-4(a))
6. The final plat review fee shall be submitted with the final plat submittal. (Section 3-4-4(a))
7. Consent to Plat form, including notarized signatures of all owners of interest, if the developer is not the underlying title holder, shall be submitted with the final plat submittal. (Section 3-4-4(a))
8. A Title Report or updated Abstract dated no less than one (1) year prior to the date of submittal shall be submitted with the final plat submittal. (Section 3-4-4(a))
9. RCEH approval shall be submitted with the final plat submittal. (Section 3-4-4(a))
10. Copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ shall be submitted with the final plat submittal, if applicable. (Section 3-4-4(a))
11. The approved Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the subdivision shall be submitted with the final plat submittal. (Section 3-4-4(a))
12. A final approach permit from the Ravalli County Road and Bridge Department for Lot 2 shall be submitted with the final submittal. (Section 3-4-4(a))
13. Utility availability certification(s) from Ravalli Electric Cooperative and Qwest Communications shall be submitted with the final plat submittal. (Section 3-4-4(a))
14. The applicant shall submit a master irrigation plan, which includes a diagram of existing irrigation infrastructure/easements either on the final plat or in a separate document and the irrigation agreement, with the final plat application. In addition to the required provisions in Section 3-1-5(a)(xxv), the applicant shall also provide a detailed description of the existing water rights in the irrigation agreement. (Section 3-4-4(a))

15. Protective covenants to be filed with the final plat that are signed and notarized shall be submitted with the final plat submittal. (Section 3-4-4(a))
16. Copies of permits issued by the Bitterroot Conservation District or the US Army Corps of Engineers when construction occurs on environmentally sensitive features shall be submitted with the final plat submittal. (Section 3-4-4(a))
17. A copy of the letter sent to the Victor School District stating the applicant has made or is not willing to make a voluntary contribution (to be determined) to the school district to mitigate impacts of the subdivision on the school district that are not related to capital facilities; shall be submitted with the final plat submittal. (Section 3-4-4(a))
18. Evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider, Professional Engineer, or contractor, as may be appropriate and required. A Professional Engineer's certification shall be required in any instance where engineered plans are required for the improvement. Alternatively, an improvements agreement and guaranty shall be required. (Refer to Section 3-4-2.) (Section 3-4-4(a)) The following improvements have been approved through this proposal:
  - Prior to final plat approval, the driveway approach to Lot 2 shall be paved from the edge of pavement of Red Crow Road to the eastern boundary of the easement for Red Crow Road.
19. The applicant shall pay the pro rata share of the cost to improve the portions of Fifth Avenue, Pleasant View Drive, and Red Crow Road leading to the subdivision prior to final plat approval. (Section 5-4-5(d), RCSR)

## **SUBDIVISION REPORT**

### **COMPLIANCE WITH PREREQUISITES TO APPROVAL**

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plat unless it establishes by credible evidence that the proposed subdivision meets the following requirements:

#### **A. Provides easements for the location and installation of any planned utilities.**

##### Findings of Fact

1. Existing utilities are located along Red Crow Road, which provides for a 60-foot wide public road and utility easement. (Eby Subdivision Application)
2. *Existing and proposed utility easements are required to be shown on the final plat. (Final Plat Requirement 2)*

##### Conclusion of Law

The proposed subdivision application provides for utility easements.

#### **B. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plat and in any instrument transferring the parcel.**

##### Findings of Fact

1. There are several different routes to the proposed subdivision. From Victor, the property is accessed via Fifth Avenue, Pleasant View Drive, and Red Crow Road. From the south, the property is accessed from Highway 93 via Bear Creek Road and Red Crow Road. (Map 1)
2. Fifth Avenue, Pleasant View Drive, Red Crow Road, and Bear Creek Road are County-maintained roads, which provide legal access. (RCSR)
3. The applicant is required to pay the pro share of the cost to improve these roads to meet County standards. (RCSR)
4. The applicant requested a preliminary pro rata assessment from the Ravalli County Road and Bridge Department. Pro rata was assessed for the most logical route, via Fifth Avenue, Pleasant View Drive, and Red Crow Road, as determined by the Road Department. (Eby Subdivision Application)
5. *To ensure legal and physical access to the subdivision via Fifth Avenue, Pleasant View Drive, and Red Crow Road, the applicant is required to pay the pro rata share of the cost to improve the portions of Fifth Avenue, Pleasant View Drive, and Red Crow Road leading to the subdivision prior to final plat approval. (Final Plat Requirement 19)*

##### Conclusion of Law

With the pro rata requirement of final plat approval, legal and physical access will be provided via Fifth Avenue, Pleasant View Drive, and Red Crow Road.

#### **C. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section [3-4-2] of these regulations.**

##### Finding of Fact

The applicant is required to submit evidence that the following improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider prior to final plat approval (Final Plat Requirement 18):

- Prior to final plat approval, the driveway approach to Lot 2 shall be paved from the edge of pavement of Red Crow Road to the eastern boundary of the easement for Red Crow Road.

#### Conclusion of Law

The final plat requirements or an improvements agreement and guaranty will ensure that the improvements are installed.

- D. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

#### Findings of Fact

1. 76-3-504(1)(j), MCA states that when a subdivision creates parcels with lot sizes averaging less than 5 acres, the subdivider is required to:
  - (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;
  - (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
  - (iii) reserve and sever all surface water rights from the land.
2. The average lot size for this proposal is approximately 60.4 acres.

#### Conclusion of Law

The provisions in 76-3-504(1)(j), MCA, do not apply because the average lot size is greater than 5 acres.

- E. Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

#### Findings of Fact

1. 76-3-504(1)(k) MCA states that, except as provided in subsection (1)(k)(ii) (the proposal does not meet the criteria in this subsection), the subdivider is required to establish ditch easements in the subdivision that:
  - (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
  - (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
  - (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
2. There is an existing irrigation ditch traversing both proposed lots within the subdivision. The ditch is labeled as an "Existing Irrigation Ditch Within 10' Easement" on the preliminary plat. (Eby Subdivision Application)
3. *To ensure that the provisions of 76-3-504(1)(k) MCA are met, the following requirement and condition shall be met prior to final plat approval:*
  - *The 10-foot wide irrigation easement is required to be shown on the final plat, as shown on the preliminary plat. (Final Plat Requirement 2)*

- *A notification that the placement of structures or the planting of vegetation other than grass is prohibited without the written permission of the ditch owner shall be included in the notifications document. (Condition 1)*

Conclusion of Law

With the requirement and condition of final plat approval, this prerequisite will be met.

**F. Provides for the appropriate park dedication or cash-in-lieu, if applicable.**

Finding of Fact

Parkland dedication is not required for two-lot first minor subdivisions. (Section 3-3-2(b), RCSR)

Conclusion of Law

This requirement is not applicable.

**COMPLIANCE WITH APPLICABLE REGULATIONS**

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plat, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

**A. These regulations, including, but not limited to, the standards set forth in Chapter 5.**

Findings of Fact

1. The subdivision design as indicated on the preliminary plat meets the design standards in Chapter 5 of the RCSR. (Eby Subdivision File)
2. This development proposal has followed the necessary application procedures and has been reviewed in compliance with Chapter 3 of the RCSR. (Eby Subdivision File)

Conclusions of Law

1. The preliminary plat and subdivision application meet all applicable standards required in the RCSR.
2. The requirements for the application and review of this proposed subdivision have been met.

**B. Applicable zoning regulations.**

Findings of Fact

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2038). The application complies with Resolution 2038.
2. The property is not within one of the voluntary zoning districts in Ravalli County. (Eby Subdivision Application)

Conclusion of Law

This proposal complies with existing zoning regulations.

**C. Existing covenants and/or deed restrictions.**

Findings of Fact

1. There are no existing covenants on the property. (Eby Subdivision Application)
2. There is a life estate and right to burial provided for Lola Bishop Eby and L. Wayne Eby in the deed (Document #569797). They will be allowed to live in the existing residence on proposed Lot 1 until they pass away. A burial site and easement for family will be provided on the property. (Eby Subdivision Application)

Conclusion of Law

The proposal complies with the deed restrictions.

**D. Other applicable regulations.**

Findings of Fact

1. Following are regulations that may apply to this subdivision:

- Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA
- Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
- Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
- Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
- Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)

2. Prior to final plat approval, the applicants are required to submit permits and evidence that they have met applicable regulations. (Section 3-4-4(a), RCSR)

Conclusion of Law

With the requirements of final plat approval, the application will meet all of the applicable regulations.

**E. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:**

**CRITERION 1: EFFECTS ON AGRICULTURE**

Findings of Fact:

1. The property has been used for horse pasture and limited hay production. The applicant is proposing large lots that will continue to be used as horse pasture (Eby Subdivision Application)
2. Parcels to the north of the subject property are classified for tax purposes as agricultural rural and appear to be used for grazing. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services and 2005 Aerial Photography created by the National Agricultural Imagery Program)
3. There is no prime farmland or farmland of statewide importance on the property. (Eby Subdivision Application and Web Soil Survey, U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS))
4. The applicants submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated Spotted Knapweed, St. Johnswort, Ox-eye Daisy, and Sulfur Cinquefoil were scattered on the property. The subdivider has proposed a provision in the covenants that the owners of each lot control noxious weeds. (Eby Subdivision Application)
5. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
6. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agriculture:*
  - *A notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat. The protective covenants, also filed with the final plat,*

*shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (Conditions 1 and 2)*

- The approved Ground Disturbance and Noxious Weed Management Plan is required to be submitted prior to final plat approval. (Final Plat Requirement 11)*
- A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*

#### Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, there will be minimal impacts on agriculture.

### **CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES**

#### Findings of Fact

1. There are three water rights associated with the property. Water right number 76H 21143 00 is a decreed right that provides 2.5 cfs from the North Fork of Bear Creek for flood irrigation. Water right 76H 21144 00 is a filed right for 1.5 cfs from an unnamed tributary of the North Fork of Bear Creek for flood irrigation. Water right number 76H 21145 00 is a filed right with no flow rate because it is used for stock. (Eby Subdivision Application)
2. The applicant is proposing to divide the water rights so that Lot 1 has 1/3 of the irrigation water from water rights 76H 21143 00 and 76H 21144 00, and 100% of the water from 76H 21145 00. Lot 2 will have 2/3 of the irrigation water from water rights 76H 21143 00 and 76H 21144 00. The applicant is proposing an irrigation agreement that outlines the division of water rights. (Eby Subdivision Application)
3. A ditch travels from the North Fork of Bear Creek to deliver water to both Lots 1 and 2. An unnamed tributary of the North Fork of Bear Creek traverses Lot 1 and the North Fork of Bear Creek traverses Lot 2. No additional irrigation infrastructure is proposed. (Eby Subdivision Application)
4. There is a 10-foot wide easement proposed on the ditch. There are downstream users. (Eby Subdivision Application)
5. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agricultural water user facilities:*
  - The notifications document filed with the final plat shall include a notification of the irrigation ditch and easement on Lots 1 and 2. (Condition 1)*
  - The applicant shall submit a master irrigation plan, which includes a diagram of existing irrigation infrastructure/easements either on the final plat or in a separate document and the irrigation agreement, with the final plat application. In addition to the required provisions in Section 3-1-5(a)(xxv), the applicant shall also provide a detailed description of the existing water rights in the irrigation agreement. (Final Plat Requirement 14)*
  - The 10-foot wide irrigation easement shall be shown on the final plat, as proposed on the preliminary plat. (Final Plat Requirement 2)*

#### Conclusion of Law

With the mitigating conditions of approval and requirements of final plat approval, there will be minimal impacts on agricultural water user facilities.

### **CRITERION 3: EFFECTS ON LOCAL SERVICES**

#### Findings of Fact:

##### Fire District

1. The subdivision is located within the jurisdiction of the Victor Rural Fire Department. (Eby Subdivision Application)

2. The All Valley Fire Council, which includes the Victor Rural Fire Department, has adopted Fire Protection Standards (outlined in document from the Hamilton Rural Fire Department) that address access, posting of addresses, and water supply requirements. The Fire Council also recommends that houses within this subdivision be built to International Residential Building Code (IRBC) building standards. (Exhibit A-1)
3. *The following conditions will mitigate impacts of the subdivision on the Victor Rural Fire Department:*
  - *Provisions shall be included in the covenants requiring that addresses are posted as soon as construction begins and that all driveways over 150 feet meet the standards of the Fire District. (Condition 2)*
  - *The covenants shall include a recommendation that houses within this subdivision be built to International Residential Building Code (IRBC) building standards. (Condition 2)*
  - *Prior to final plat approval, the subdividers shall provide a letter from the Victor Rural Fire Department stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for the additional lot. Alternatively, the subdividers may provide evidence that \$500 has been contributed to the Victor Rural Fire Department with the final plat submittal in lieu of the required water supply or water storage for fire protection. (Condition 5)*
  - *The following statement shall be shown on the final plat: "The All Valley Fire Council, which includes the Victor Rural Fire Department, has adopted Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Victor Rural Fire Department for further information". (Condition 6)*

#### School District

4. The proposed subdivision is located within the Victor School District. (Eby Subdivision Application)
5. It is estimated that 0 to 1 school-aged child will be added to the Victor School District, assuming an average of 0.5 children per household. (Census 2000)
6. An existing home is located on proposed Lot 1. Through a life estate, the elderly couple that currently resides in the home will remain until they pass away. The future owner of Lot 2, the developer, will not have any school-aged children. The applicant is proposing to contribute \$250 to the School District. (Eby Subdivision Application and email from Bill Burnett dated November 16, 2007)
7. Notification letters were sent to the Victor School District requesting comments on January 23, 2007 and November 14, 2007, but no comments have been received from the School District. (Eby Subdivision File)
8. The cost per pupil for one year in the Victor School District, excluding capital costs, is \$6,747. Taxes from new residents are not immediately available to the school districts. (Exhibit A-2)
9. *While there is a high probability that this proposal will not result in additional students to the school district, there is nothing in the proposal that prohibits school children from living at the future residence on Lot 2. Staff recommends that the applicant negotiate a contribution with the BCC, in consultation with the Victor School District, if possible, to mitigate potential impacts of an additional student on the School District. (Condition 7 and Final Plat Requirement 17)*

#### Water and Wastewater Districts

10. Individual wells and wastewater treatment systems are proposed to serve the lots. The property is not near any municipal water or wastewater systems. (Eby Subdivision Application)



Law Enforcement and County Emergency Services (Sheriff, E-911, DES)

11. The Ravalli County Sheriff's Office provides law enforcement services to this area. (Eby Subdivision Application)
12. Notification letters were sent to the Ravalli County Sheriff's Office requesting comments on January 23, 2007 and November 14, 2007, but no comments have been received from the Sheriff's Office. (Eby Subdivision File)
13. The average number of people per household in Ravalli County is 2.5. (Census 2000)
14. The applicant proposed to contribute \$500 to mitigate the impacts of the additional 2.5 people on Public Safety Services. (Eby Subdivision Application)
15. *To mitigate impacts on Ravalli County Public Safety Services, the subdivider shall submit \$500 to the Ravalli County Treasurer's Office to be deposited into an account for Public Safety Services (Sheriff, E-911, DES) prior to final plat approval. (Condition 8)*

Ambulance Services

16. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Dept. Marcus Daly was contacted on January 23, 2007 and November 14, 2007, but no comments have been received to date. (Eby Subdivision File)
17. *To mitigate impacts on emergency services, the subdivider shall provide evidence with the final plat submittal that they have applied for a County-issued address for the new lot. (Condition 4)*

Solid Waste Services

18. Bitterroot Disposal provides solid waste service to this site.
19. Notification letters were sent to Bitterroot Disposal requesting comments on January 23, 2007 and November 14, 2007, but no comments have been received. (Eby Subdivision File)

Utilities

20. The proposed subdivision will be served by Ravalli Electric Cooperative and Qwest Communications. (Eby Subdivision Application)
21. Notification letters were sent to both utility companies requesting comments on January 23, 2007 and November 14, 2007, but no comments have been received by either company. (Eby Subdivision File)
22. *The following requirements will mitigate impacts of the subdivision on local utilities:*
  - *Existing and proposed utility easements shall be shown on the final plat. (Final Plat Requirement 2)*
  - *The applicant shall submit utility availability certifications from Ravalli Electric Cooperative and Qwest Communications prior to final plat approval. (Final Plat Requirement 13)*

Roads

23. It is estimated that this subdivision will generate an additional 8 trips per day. (Eby Subdivision Application)
24. Fifth Avenue, Pleasant View Drive, and Red Crow Road provide access to the subdivision from US Highway 93. (Eby Subdivision Application)
25. Fifth Avenue, Pleasant View Drive, and Red Crow Road are County-maintained roads. (RCSR)
26. The applicant is required to pay the pro rata share of the cost to improve the portions of Fifth Avenue, Pleasant View Drive, and Red Crow Road leading to the subdivision. (Section 5-4-5(d), RCSR)
27. There is an existing home built in 1970 on proposed Lot 1 that will continue to access off the existing approach to Red Crow Road. The applicant is proposing a new approach to access Lot 2. The applicant submitted a preliminary approach permit from the Road and Bridge Department. (Eby Subdivision Application)
28. Red Crow Road has an asphalt surface. (Eby Subdivision Application)

29. The applicant is proposing to pave the approach to the driveway on Lot 2 from the edge of pavement of Red Crow Road to the eastern boundary of the road easement prior to final plat approval. (Eby Subdivision Application)
30. *To mitigate impacts on the roads leading to the subdivision, the following conditions and requirements shall be met:*
- *The applicant shall pay the pro rata share of the cost to improve the portions of Fifth Avenue, Pleasant View Drive, and Red Crow Road leading to the subdivision to meet County standards prior to final plat approval. (Final Plat Requirement 19)*
  - *A final approach permit from the Ravalli County Road and Bridge Department for Lot 2 shall be submitted with the final submittal. (Final Plat Requirement 12)*
  - *To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (Conditions 2 and 3)*
  - *The final plat shall show a no-ingress/egress zone along the Red Crow Road frontage of Lots 1 and 2, excluding the existing driveway to the residence on Lot 1 and the approved approach to Lot 2. A notification of the no-ingress/egress zone shall be included in the notifications document. (Final Plat Requirement 2 and Condition 1)*
  - *Prior to final plat approval, the applicant shall provide evidence that the approach to the driveway for Lot 2 has been completed, as proposed. (Final Plat Requirement 18)*

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, there will be minimal impacts on local services.

**CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT**

Findings of Fact:

Air Quality

1. In an email dated January 10, 2007, the Montana Department of Environmental Quality (DEQ) identified the Hamilton and Missoula areas as communities with a high probability of failing to meet the recently revised National Ambient Air Quality Standards for particulate matter. Sources of particulate from this subdivision could be vehicles, and/or wood-burning stoves. There are no gravel roads accessing the subdivision. (Exhibit A-3)
2. *To mitigate impacts on air quality, a recommendation for EPA-certified wood stoves shall be included in the covenants. (Condition 2)*

Ground Water Quality

3. Lot 1 has an existing onsite septic system and individual well. The applicant is proposing a new onsite septic system with an elevated mound and an individual well for Lot 2. (Eby Subdivision Application)
4. Because both lots are 20 acres or more, review of the water and wastewater treatment facilities for the subdivision will be completed by the Ravalli County Environmental Health Department instead of DEQ. (Section 5-3-1(b), RCSR)
5. The home on Lot 1 was constructed in 1970, prior to the Montana Subdivision and Platting Act. Since the wastewater treatment system was installed prior to the issuing of septic permits, it is grandfathered. (Eby Subdivision Application)
6. The Ravalli County Environmental Health Department issued a permit for the proposed well and the wastewater treatment system on Lot 2. (Eby Subdivision Application)
7. *The applicant is required to submit a final letter of approval for the water and sanitation review from the RCEH prior to final approval. RCEH will require the applicant to complete a Sanitation in Subdivision Exemption Application. (Final Plat Requirement 9)*

#### Surface Water Features

8. The North Fork of Bear Creek traverses Lot 2 and an unnamed tributary of the North Fork of Bear Creek traverses Lot 1. The applicant's consultant identified wetlands on the property. (Eby Subdivision Application)
9. The applicant is proposing to install a culvert for the driveway in a wetlands area. A permit from the U.S. Army Corps of Engineers has been obtained by the applicant. The applicant is proposing no-build/alteration zones over the wetlands/riparian areas and has designated a building envelope for the residence. (Eby Subdivision Application)
10. Both the old version of the National Wetlands Inventory (NWI) and the updated version of the NWI identify wetlands on the property. The NWI data for Montana are based on color infrared aerial photographs taken between 1980 and 2005. The recommended scale is 1:24,000 or smaller. Due to the scale, the primary intended use is for regional and watershed data display and analysis, rather than specific project data analysis. (U.S. Fish and Wildlife Service National Wetlands Inventory - Map 2)
11. FWP concurred with the applicant's proposed no-build/alteration zones. They recommended that FWP's riparian covenants be applied to the no-build/alteration zones. (Exhibit A-4)
12. The Ravalli County Floodplain Administrator made the following recommendations to mitigate impacts of the proposal on the riparian and wetland areas:
  - The no-build/alteration zones, as proposed on the preliminary plat, should be on the final plat.
  - A wetlands delineation should be conducted to adequately identify the locations of these sensitive lands. All wetlands should be identified on the final plat and classified as a no-build/alteration zone. Additionally, a 50-foot no-build zone is recommended to buffer and reduce impacts to the established wetlands.
  - Permits required from other agencies should be obtained before proceeding with the project.
13. There are two ponds located on the property that are stocked with fish. (Eby Subdivision Application and Exhibit A-6)
14. *To mitigate the impacts of this subdivision on the surface water features, the following conditions and requirements shall be met:*
  - *The no-build/alteration zones shall be shown on the final plat, as proposed in the preliminary plat. (Final Plat Requirement 2)*
  - *FWP's riparian covenants shall apply to the no-build/alteration zones. (Condition 2)*
  - *A building envelope shall be designated on the final plat and shall not encroach on the no-build/alterations zones. (Condition 9)*
  - *Prior to final plat approval, the applicant shall provide permits from DNRC for the water rights to the two ponds and permits from FWP for any fish in the ponds or evidence that the permits are not required. (Condition 10)*

#### Light Pollution

15. The addition of homes in an area that currently has lower density development has the potential to create light pollution. Sky glow, glare, light trespass into neighbor's homes, and energy waste are some of the components of light pollution. (International Dark-Sky Association, [www.darksky.org](http://www.darksky.org))
16. *To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*

#### Vegetation

17. The applicants submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated Spotted Knapweed, St. Johnswort, Ox-eye Daisy, and Sulfur Cinquefoil were scattered

on the property. The subdivider has proposed a provision in the covenants that the owners of each lot control noxious weeds. (Eby Subdivision Application)

18. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
19. The Montana Natural Heritage Program found that there were no plant species of concern within the same sections as the subject property (Eby Subdivision Application).
20. *To mitigate impacts on the natural environment, a noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*

#### Archaeological Resources

21. There are no known sites of historical significance on the property. (Eby Subdivision Application)
22. *To mitigate possible impacts on any potential sensitive historical, cultural, archaeological, paleontological, and/or scenic sites, the following statement shall be included in the covenants: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the developer will contact the State Historic Preservation Office to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (Condition 2)*

#### Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval.

#### **CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT**

##### Findings of Fact:

1. The property is located within big-game winter range. (FWP)
2. FWP recommended living with wildlife covenants for the property. (Exhibit A-4)
3. According to the Montana Natural Heritage Program (MNHP) in January of 2007, the A Cave Obligate Amphipod, Bull Trout, Canada Lynx, Olive-sided Flycatcher, the Bobolink, the Townsend's Big-eared Bat, the Westslope Cutthroat Trout, and Lewis's Woodpecker were identified as species of concern as they have been known to exist in the same section as the proposed subdivision. (Eby Subdivision Application)
4. Current sensitive species data from MNHP (April, 2007) shows that the Olive-sided Flycatcher, Bobolink, Townsend's Big-eared Bat, and Westslope Cutthroat Trout have occurred within the same sections as the subject property. (MNHP)
5. The subdivider requested and received waivers from the requirement to submit sensitive species reports for the Bobolink and the Townsend's Big-eared Bat because of the lack of habitat on the property. (Eby Subdivision File)
6. The subdivider submitted a sensitive species report for the Olive-sided flycatcher prepared by an ecological consultant named Joe C. Elliot Ph.D. Mr. Elliot visited the site in September of 2007 and found the habitat to be marginal for the Olive-sides flycatcher. (Eby Subdivision Application)
7. The subdivider submitted a sensitive species report for the Westslope Cutthroat Trout and Bull Trout from Amy Chadwick, biologist with Watershed Consulting, LLC. Ms. Chadwick noted that the North Fork of Bear Creek likely supported fish species. She agreed with the proposed no-build/alteration zones and further recommended that the wooded riparian area along the North Fork of Bear Creek be fenced from grazing.
8. *To mitigate impacts on wildlife, the following conditions shall be met:*
  - *The covenants shall include a living with wildlife section. (Condition 2)*

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- *The no-build/alteration zones, as proposed on the preliminary plat, shall be shown on the final plat. (Final Plat Requirement 2)*
- *Riparian covenants, including a provision that fencing be maintained to ensure that livestock do not damage the riparian areas associated with the creeks that traverse the property, shall apply to the no-build/alteration zones. (Condition 2)*

#### Conclusion of Law:

With the mitigating conditions of approval, impacts on Wildlife & Wildlife Habitat will be reduced.

#### **CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY**

##### Findings of Fact:

##### Traffic Safety

1. Access is proposed off Fifth Avenue, Pleasant View Drive, and Red Crow Road from US Highway 93. (Eby Subdivision Application)
2. *The requirements and conditions listed under Roads in Criterion 3 will mitigate the impacts of the subdivision on traffic safety.*

##### Emergency Vehicle Access and Response Time

3. The proposed subdivision will be served by the Victor Rural Fire Department, the Ravalli County Sheriff's Office, Ravalli County E-911, the Ravalli County Department of Emergency Services, and Marcus Daly Memorial Hospital EMS Department. (Eby Subdivision Application)
4. This proposal will add approximately 2 to 3 people to Ravalli County. (Census 2000)
5. *The requirements and conditions listed under Fire District, Law Enforcement and County Emergency Services, Ambulance Services, and Roads in Criterion 3 will mitigate the impacts of the subdivision on emergency vehicle access and response time.*

##### Water and Wastewater

6. There is an existing well and wastewater treatment system on Lot 1. These systems were installed prior to the Montana Subdivision and Platting Act and are grandfathered. The applicants are proposing an individual well and wastewater facilities for Lot 2. The Ravalli County Environmental Health Department has issued permits for the proposed well and wastewater treatment facilities. (Eby Subdivision Application)
7. *The applicant is required to submit a final letter of RCEH approval prior to final approval. (Final Plat Requirement 9)*

##### Natural and Man-Made Hazards

8. *To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*
9. According to a document titled "Radon and You, Promoting Public Awareness of Radon in Montana's Air and Ground Water" published by DEQ and the Montana Bureau of Mines and Geology, there is a high potential for radon in Ravalli County. (DEQ)
10. *To mitigate impacts on public health & safety, the covenants shall include a statement regarding radon exposure. (Condition 2)*
11. The preliminary plat and soils map indicate that the subdivision may have soils rated as "Very Limited" for road and building construction. (Eby Subdivision Application)
12. *To educate property owners and to mitigate potential impacts of this subdivision on Public Health & Safety, a notification of the potential for Very Limited soils shall be included in the notifications document filed with the final plat. A reduced plat showing the approximate locations of soils rated as Very Limited for roads and building construction and descriptions of the soils in question shall be attached to the notifications document as an exhibit. (Condition 1)*

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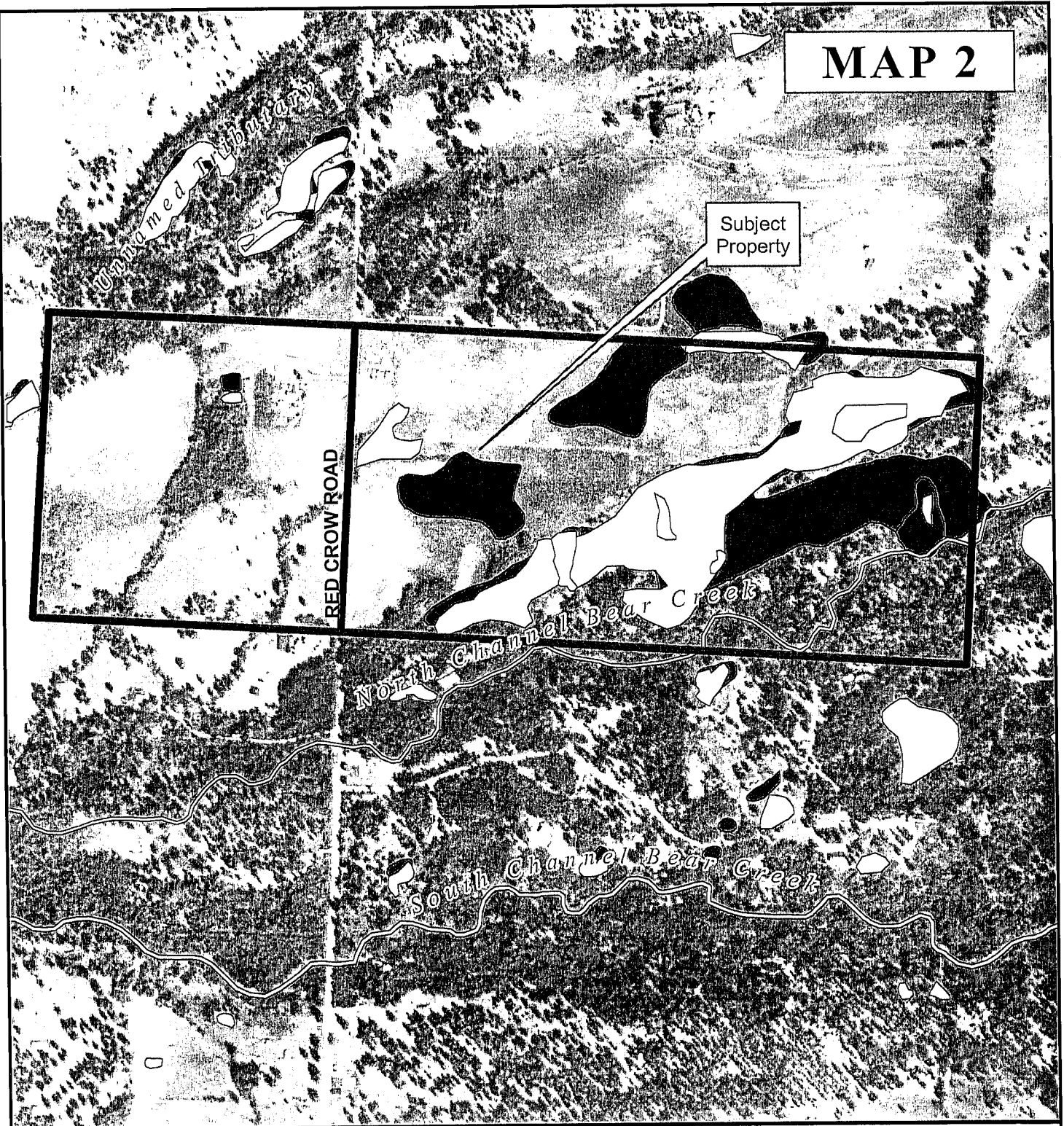
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23. The North Fork of Bear Creek traverses Lot 2 and an unnamed tributary of the North Fork of Bear Creek traverses Lot 1. (Eby Subdivision Application)
24. The applicant requested a waiver from the floodplain analysis requirement for the North Fork of Bear Creek. A floodplain analysis was not required for the unnamed tributary of the North Fork of Bear Creek. (*Section 3-1-5(a)(xl), RCSR, and Eby Subdivision Application*)
25. The Ravalli County Floodplain Administrator waived the floodplain analysis for the North Fork of Bear Creek because the applicants are proposing no-build/alteration zones over the estimated floodplain boundary, which is based on the dense riparian vegetation associated with the stream. The Ravalli County Floodplain Administrator made the following recommendations (Exhibit A-5):
- The lowest floor of all proposed structures and utilities should be located a minimum of 2.0 feet above the natural grade.
  - The no-build/alteration zones, as proposed on the preliminary plat, should be on the final plat.
  - Property owners should obtain flood insurance due to the proximity of each of the creek's estimated 100-year floodplains.
  - A wetlands delineation should be conducted to adequately identify the locations of these sensitive lands. All wetlands should be identified on the final plat and classified as a no-build/alteration zone. Additionally, a 50-foot no-build zone is recommended to buffer and reduce impacts to the established wetlands.
  - Permits required from other agencies should be obtained before proceeding with the project.
26. *To mitigate the impacts of this subdivision on public health and safety, the following conditions and requirements shall be met:*
- *The no-build/alteration zones shall be shown on the final plat, as proposed in the preliminary plat. (Final Plat Requirement 2)*
  - *A building envelope shall be designated on the final plat and shall not encroach on the no-build/alterations zones. (Condition 9)*
  - *A notification of the proximity to the North Fork of Bear Creek, a recommendation that the lowest floor of structures and utilities be located a minimum of 2.0 feet above the natural grade, and a recommendation that future owners to obtain floodplain insurance shall be included in the Notifications Document. (Condition 1)*
27. Approximately 40% of the property has moderate tree cover and the property is located 2.00 miles from the Bitterroot National Forest. There is continuous forest in the drainages that connect the property to the National Forest. (2004 Aerial Photographs)
28. The Planning Department determined that the property may be a wildland fire hazard. The applicant was required to hire a forester to determine whether or not the property was a wildland fire hazard. (*Section 5-5-4, RCSR*)
29. The area has been identified by the Bitterroot National Forest as a Wildland Urban Interface high risk area. (Exhibit A-7)
30. Because of the location of the building envelope, the Victor Volunteer Fire Department determined that the site is not a Wildland Fire Hazard risk. (Exhibit A-8)
31. Mark Lewing, a forester hired by the applicant, completed a fire risk assessment on the property and determined that the wildland fire hazard was extremely low to non-existent. (Exhibit A-6)


Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on Public Health & Safety.


# MAP 2



## Map Legend

 NWI Boundary (Updated 11/5/2007)

 NWI Boundary (3/14/2005)

0 300 600 1,200  
 Feet

1:7,200

N



**Eby Subdivision**  
National Wetlands Inventory  
Source: U.S. Fish and Wildlife Service

This map was created by the Ravalli County Planning Department and is for general planning purposes only.



SEP 13 2005

USE for all  
districts.**Hamilton  
Rural Fire  
DISTRICT**Consensus of All Valley Fire  
Council.  
Ravalli County Planning Dept.  
TC-05-09-1707  
Post Office Box 1994 Hamilton, MT 59840**FIRE PROTECTION STANDARDS**

The following Fire Protection Standards were adopted on September 6, 2005.

The Hamilton Rural Fire District has established the Fire Protection Standards for proposed new subdivisions within the district. The requirements were established with consideration for the life and safety of the residents of the district, as well as the volunteer firemen who protect the district, and to mitigate possible harm to the general public.

In establishing the requirements, emphasis was given to the NFPA 1, Chapter 18, The Ravalli County Subdivision Regulations, The Ravalli County Road Department Standards, and the 1993 Fire Protection Guidelines for Wildland Residential Interface Development. These Publications and Articles establish rules for dealing with fire apparatus access roads, fire department access to buildings, water supplies for fire protection, installation and maintenance of fire - protection systems and clearance of brush and vegetative growth from roadways.

Consideration was also given to Section 23.7.105 Administrative Rules of Montana, which is adopted pursuant to authority of 50-3-102 (2) and 50-3-103, MCA, which incorporates by reference the NFPA 1, Chapter 18, and establishes a minimum fire prevention code for Montana.

Every effort has been made to use words and phrases consistent with the definitions given in the above-mentioned publications.

**ACCESS ROADS**

The Fire District requires that all roads and bridges meet or exceed, and are maintained to, the requirements of the NFPA 1, Chapter 18, which reads in part:

**18.2.2.3.1 Required Access.** Fire Apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction when any portion of the facility or any portion of an exterior wall of the first story of the building is located more than 150 feet (45720 mm) from fire apparatus access as measured by an approved route around the exterior of the building or facility.



**18.2.2.5.1 Dimensions.** Fire apparatus access roads shall have an unobstructed travel surface not less than 22-feet in width, which may include a two foot shoulder on each side of an 18-foot wide travel surface, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).

**18.2.2.5.2 Surface.** Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with a surface so as to provide all-weather driving capabilities.

**18.2.2.5.6 Grade.** The gradient for a fire apparatus access road shall not exceed the maximum approved by the fire chief. The Chief accepts the Resolution approved by the Board of County Commissioners of Ravalli County which sets the maximum acceptable road grade at ten percent (10%).

**EXCEPTIONS: 1.** When buildings are completely protected with an approved automatic sprinkler system, the provisions of NFPA 1, Chapter 18, may be modified by the Fire Chief.

**While not all parts of the NFPA 1 are listed above it is the responsibility of the Subdivision Developer to construct and maintain all fire apparatus access roads to comply with all aspects of the NFPA 1 and Ravalli County Standards.**

**SPECIFIC REQUIREMENTS:**

The Fire District requests that all lots (premises) meet the requirements of NFPA 1, Section 18.2.2.5.7 as soon as construction begins with a temporary or permanent address posted at the premises driveway and upon occupancy with a permanent address posted in accordance with the above NFPA 1.

**BUILDING STANDARDS**

The Fire District will request that all buildings be built to IRBC codes in order to protect persons and property, and that all subdivisions shall be planned, designed, constructed and maintained so as to minimize the risk of fire and to permit effective and efficient suppression of fires.

**WATER SUPPLY**

The water supply required by the NFPA 1 for one or two family dwellings, not exceeding 3,600 square feet, requires a flow rate of 1,000 G.P.M. The code does not specify the duration of flow for one and two family dwellings, however the Fire Protection Guidelines for Wildland Residential Interface Development and the Ravalli County Subdivision Regulations list the minimum water supply of 2,500 gallons per lot, or 1,000 gallons per minute flow from municipal water systems.

In order to obtain and maintain a Class 5 ISO rating, the Hamilton Volunteer Fire Department is required to flow 500 gallons and maintain this flow for 120 minutes. By ISO standards this is usually sufficient to protect single-family dwellings with adequate spacing between structures. ISO uses the following flow rates, from their *Guide for Determination of Needed Fire Flow*, Chapter 7, when considering adequate coverage for density:

Distance Between Buildings	Needed Fire Flow
More than 100'	500 gpm
31 - 100'	750 gpm
11 - 30'	1,000 gpm
10' or less	1,500 gpm

The Hamilton Rural Fire District will use these fire flows for all subdivisions of single-family dwellings with less than 10 lots. All developments of single-family dwellings with 10 or more lots require a minimum of 1,000 gallons per minute. All commercial, industrial, or multi-family dwellings requiring higher fire flows will have to be engineered by the developer to determine needed fire flows.

Any development in the rural area, with density requiring more than the 500 gallons per minute being supplied by the Hamilton Volunteer Fire Department, will be requested to supply the difference. The water supply installation, upkeep and maintenance will be the responsibility of the Subdivision, pursuant to NFPA 1, Section 18.3.5.

The Fire District realizes the financial burden of installing and maintaining a water supply and or storage tanks capable of providing the required water flows and is willing to accept a voluntary contribution payment of \$500.00 (Five Hundred Dollars) per lot, in lieu of the water supply required by the NFPA 1. Payment of \$500.00 per lot will be due upon approval of the subdivision. The Fire District will use funds paid in lieu of the water supply required by the NFPA 1 to maintain or improve fire protection within the district, for the development of water supplies, or capital improvements.

**EXCEPTIONS: 1.** When all buildings in the subdivision are completely protected with an approved automatic sprinkler system, the above listed water supply and in lieu of payment schedule may be reduced by 50% (fifty percent). The Subdivision Covenants must state that "All residences constructed within the subdivision will be protected with an approved automatic sprinkler system." Payment for the reduced amount of \$250.00 per lot will be accepted at the time the Subdivision is approved. If at any time any residence is built within the subdivision without an approved sprinkler system, all lots will be subject to an additional \$250.00 payment, regardless of whether they have sprinklers in residences located on them or not.

## Budget Per Pupil/Tax Levy Per Pupil

Year 2007-2008

School	Total Budget	Students October Count	Budget Per Pupil
Corvallis	9,246,716	1,413	6,544
Stevensville Elem	4,313,675	615	7,014
Stevensville HS	3,844,872	426	9,026
Hamilton	10,696,135	1,616	6,619
Victor	2,354,712	349	6,747
Darby	3,918,507	435	9,008
Lone Rock Elem	2,010,732	301	6,680
Florence	6,004,225	898	6,686

NOTE: 1. This does not include any federal funds or budget for federal programs. This makes these figures reflect budget and revenue only from state, county and local sources.

School	Total Tax Except Capital	Students October Count	County & State Levy*	Tax Levy Per Pupil Exc Capital	Total Capital	Per Pupil Tax Capital	Total Tax Levy Inc Capital	Tax Levy Per Pupil Inc Capital
Corvallis	1,894,368	1,413	941,511	2,007	166,126	117.57	3,002,005	2,125
Stevensville Elem	1,077,017	615	412,448	2,422	120,541	196.00	1,610,006	2,618
Stevensville HS	818,794	426	329,287	2,695			1,148,081	2,695
Hamilton	2,714,396	1,616	1,050,013	2,329	909,210	562.63	4,673,619	2,892
Victor	468,192	349	202,861	1,923	297,013	851.04	968,066	2,774
Darby	1,022,738	435	371,211	3,204		0.00	1,393,949	3,204
Lone Rock Elem	432,039	301	223,920	2,179	102,211	339.57	758,170	2,519
Florence	1,234,419	898	776,153	2,239	24,542	27.33	2,035,114	2,266

NOTE: \* County levied Retirement and Transportation

**Renee Van Hoven**

---

**From:** Karen Hughes  
**Sent:** Thursday, January 11, 2007 8:21 AM  
**To:** Jennifer Degroot; John Lavey; Laura Hendrix; Planning; Renee Van Hoven; Shaun Morrell; Tristan Riddell; Vanessa Perry  
**Subject:** FW: Potential Montana PM2.5 Non-Attainment Areas  
**Importance:** High  
**Attachments:** PM25\_NAAQS\_MT\_Review\_Rev.doc

Interesting.

*Karen Hughes, AICP  
Ravalli County Planning Department  
215 S. 4th Street Ste F  
Hamilton, MT 59840  
Phone (406) 375-6530  
Fax (406) 375-6531  
knhughes@ravallicounty.mt.gov*

---

**From:** Planning  
**Sent:** Thursday, January 11, 2007 8:15 AM  
**To:** Karen Hughes  
**Subject:** FW: Potential Montana PM2.5 Non-Attainment Areas  
**Importance:** High

---

**From:** Jeffrey, Robert [mailto:rjeffrey@mt.gov]  
**Sent:** Wednesday, January 10, 2007 5:22 PM  
**To:** Ben Schmidt; Cascade Sanitarians; Cherry Loney; Dan Dennehy; Dan Powers; Eric Englebert; Jan Scher; Jennifer Pinnow; Jim Carlson; Joe Russell; Kathy Moore; Morgan Farrell; Paul Riley; Rick Larson; Ron Anderson; Russ Boschee; Shannon Therriault; Stephanie Nelson; Ted Kylander; Wendee Jacobs; Andy Hunthausen; Barbara Evans; Bill Carey; BSB Commission; Chris Kukulski; City Commission; City Council; City Council; City Council; City Council; County Commission; County Commission; County Commission; Glenda Wiles; Ed Tinsley; Gary Marks; Jean Curtiss; Jeff Krauss; Jim Smith; Mike Murray; Paul Babb; Planning; Ron Alles; Tim Burton; Andy Epple; Ben Rangel; Bob Horne; Candi Beaudry; Charlie Johnson; Chris Saunders; Cloud, Bill; Cynthia Wulfekuhle; Dave Dobbs; David Mumford; David Ohnstad; Debbie Arkell; Duke, Becky; Eric Griffin; Frank Rives; Gregory Robertson; Helm, Cora; Henry Hathaway; James Hansz; Jason Karp; Jean Pentecost; Jeff Harris; Jim Rearden; Joesph Menicucci; John Rundquist; John VanDaveer; John Wilson; Karen Hughes; Kevin McGovern; Mike Kress; Rick Hixson; Ryan Leland; Scott Walker; Sesso, Jon; Steve King; Steyaert, Tom; Straehl, Sandra; Turner, Dick; Vern Heisler; Zanto, Lynn (MDT); Bob Rebarchik; Craig Glazier; Dan Redline; Dave Grace; Dave Krueger; Dusty Pence; McLeod, Scott; Myron Hotinger; Paul Wagner; Steve Hayes; Thomas Dzomba  
**Cc:** Vidrine, Don; Habeck, Bob; Coefield, John; Erp, Elton  
**Subject:** Potential Montana PM2.5 Non-Attainment Areas  
**Importance:** High

Dear Interested Party:

The U.S. Environmental Protection Agency (EPA) recently revised the National Ambient Air Quality

Standards (NAAQS) for particulate matter (PM). As you may know, the NAAQS are standards set to protect public health and welfare. The federal Clean Air Act requires EPA to review the latest scientific information and revise the NAAQS, as needed, for all criteria air pollutants every five years. The final rules for the revised PM NAAQS were published in the Federal Register at 71 FR 61144 on 17 October 2006, and became effective on 18 December 2006.

The Montana Department of Environmental Quality (DEQ) has reviewed the revised PM NAAQS and the ambient air quality data that's been collected around the state for the last several years. DEQ has identified four Montana communities with a high probability of failing to meet new PM NAAQS. Based on air monitoring data collected from 2003 through 2005, DEQ currently projects violations of the 24-hour PM2.5 NAAQS in the Missoula, Libby, Hamilton and Butte areas. The data also indicates that the Helena, Flathead and Gallatin Valleys are dangerously close to violating the 24-hour PM2.5 NAAQS. These projections will be updated as new monitoring data becomes available. The Libby area is currently designated a non-attainment area (NAA) for exceeding the annual standard based on the former 1997 PM NAAQS. I've attached a document summarizing some of the issues with the new PM NAAQS and PM data for several Montana communities.

In late 2008, based on ambient air monitoring data collected in 2005, 2006, and 2007, DEQ must notify EPA as to whether or not local Montana communities are complying with the PM NAAQS. Federally enforceable control plans must be submitted for EPA's approval for those Montana communities found in violation of any NAAQS. In a proactive attempt to prevent the designation of new NAAs, DEQ would like to work with local air pollution control agencies, the regulated community, and other interested parties to identify and control sources of particle air pollution. DEQ representatives are willing to meet with interested parties in their communities at mutually agreed upon dates and times. In addition to the PM NAAQS discussion, other air quality topics of interest could be discussed.

If interested, please contact myself or Bob Habeck ([bhabeck@mt.gov](mailto:bhabeck@mt.gov) or 444-7305) to schedule a meeting.

Thank you for your efforts in protecting Montana's clean air resources.

Robert K. Jeffrey  
Air Quality Specialist  
Air Resources Management Bureau  
MT Dept. of Environmental Quality  
(406) 444-5280; fax 444-1499  
Email: [rjeffrey@mt.gov](mailto:rjeffrey@mt.gov)

<<PM25\_NAAQS\_MT\_Review\_Rev.doc>>



**Montana  
Wildlife & Parks**

EXHIBIT A-4

RECEIVED

FEB 27 2007  
FC-07-02-250

Region 2 Office  
3201 Spurgin Road  
Missoula, MT 59804-3101  
406-542-5500  
Fax 406-542-5529  
February 26, 2007

Vanessa Perry  
Ravalli county Planning Department  
215 S 4<sup>th</sup> St, Ste F  
Hamilton, MT 59840

Reference: Eby (Tallwoods Development Corp)--Proposed minor (2 lots on 120.8 acres) subdivision--2 ½ miles SW of Victor

Dear Ms. Perry:

We have reviewed the preliminary plat and USGS topographic vicinity map you provided for this proposed subdivision. We also reviewed this parcel and its surrounds on the Montana Cadastral website (<http://gis.mt.gov/>). Based on evaluating this information and our field knowledge of this location, we note and recommend the following.

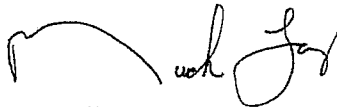
1. Wildlife species such as white-tailed deer, mule deer, elk, coyote, fox, raccoon and skunk, as well as black bear and an occasional mountain lion, could be expected in this area. Numerous small mammal and bird species would also be found nearby. There is an high probability of human/wildlife conflict at this location--particularly with black bear and deer--if residents do not pay attention to careful handling of garbage, garden/orchard produce, birdseed and other wildlife "attractants," controlling pets, etc.
  - a. Therefore, we recommend that "living with wildlife" issues be conveyed as part of the development covenants to future residents in this subdivision. Adherence to those guidelines should help residents of this subdivision deal with and avoid conflicts with wildlife. We have enclosed our recommended version of wildlife covenants for this location.
  - b. Of particular note is our recommended wildlife covenant (subsection c) that recommends homeowners keep garbage indoors--hence, unavailable to bears--except on days of garbage collection. Alternatively, if garbage is stored *outdoors* it should be required to be in bear-resistant containers. FWP has responded several times in

recent years to problems at residences in the Bear Creek area related to black bears. These problems are usually related to: improper storage of attractants (garbage, pet and/or livestock feed); unpicked, ripened fruit on trees; livestock such as goat, sheep and poultry; and bird feeders. Hence, there is a high likelihood of human/wildlife conflicts at this location if residents do not pay attention to careful handling of garbage, fruit tree and garden management.

2. The North Fork ("Channel" on USGS topographic map) of Bear Creek flows roughly west to east through the southeastern corner of this property. The plat depicts an extensive area associated with the creek as a "no build/no disturbance zone," and we appreciate that this zone appears to extend at least 100-feet outward from each side of the creek. Within 100 feet of the creek, encouraging the development of native vegetation (including shrubs and trees)--while *discouraging* actions such as grading, planting and irrigating lawns, mowing or cutting or clearing vegetation, and livestock grazing--would help preserve the functionality of the North Fork of Bear Creek and its riparian areas, protect and improve wetland vegetation, enhance slope stability, and protect property from eroding banks and possible flooding. We recommend the enclosed version of riparian covenants for this subdivision in order to protect riparian areas.

We thank you for providing the opportunity for FWP to comment on this subdivision.

Sincerely,



Mack Long  
Regional Supervisor

ML/sr

C: PCI, Attn: Bill Burnett, 1713 N 1<sup>st</sup> St., Hamilton, MT 59840

Covenants for Eby (Tallwoods Development Corp.) subdivision, recommended by Montana Fish, Wildlife & Park; Missoula; February 26, 2007

#### Section 14: Living with Wildlife

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, black bear, mountain lion, wolf, coyote, fox, skunk, raccoon and magpie. Each lot owner shall obtain or be provided and read a copy of the brochure "Living with wildlife," available from the Missoula Office of Planning and Grants (see Attachment B to these covenants). Or, please contact the Montana Fish, Wildlife & Parks office in Missoula for brochures that can help homeowners "live with wildlife." Alternatively, see FWP's web site at [www.fwp.mt.gov](http://www.fwp.mt.gov).

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. There is high potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners must be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens, fruit trees or orchards** are a major wildlife attractant, and fruit-bearing trees and shrubs can regularly attract bears in the fall. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or vegetable material can attract bears, skunks and other wildlife. Gardens should be fenced with one-foot of fencing material below ground level and be at least eight feet in height, in order to discourage wildlife such as deer from feeding in gardens. The top rail should be made of something other than wire to prevent wildlife from entanglement. Netting over gardens can help deter birds from eating berries. Electric fencing is necessary to effectively prevent wildlife such as bears from entering a garden or fruit tree/shrub area, but only if the fence is properly constructed and regularly monitored and maintained to ensure proper use and function. Consult with the Montana Department of Fish, Wildlife and Parks on the proper techniques to develop and maintain an effective electric fence.
- c. If stored outdoors, **garbage** should be in secure bear-resistant containers; otherwise it should be stored indoors prior to curbside pick-up or transport to a centralized garbage collection site, in order to avoid attracting wildlife such as bears and raccoon. If curbside garbage pick-up is available, garbage cans may not be set out until the morning of garbage pickup and must be brought in no later than that same evening. (Consult



Montana Fish, Wildlife & Parks for information on purchasing or constructing bear-resistant trash containers or storage areas.)

- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- e. **Birdseed** is an attractant to bears, and outdoor birdfeeders are strongly discouraged from April 1<sup>st</sup> through the end of November. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.
- g. **Pet food and livestock feed** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, and other wildlife. **When feeding pets and/or livestock** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- h. **Barbecue grills** should be stored indoors, and permanent outdoor barbecue grills are discouraged. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- i. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.
- j. **Compost piles** can attract skunks and bears and should be avoided. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be

composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)

- k. **Apiaries (bee hives)** could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
- l. These "living with wildlife" covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

## **Section \_\_: No-build/disturbance Zone along the North Fork of Bear Creek**

Healthy, naturally functioning riparian areas benefit fish and wildlife, as well as agriculture and recreation. The goal of the "no build/disturbance zone" along the North Fork of Bear Creek is to help preserve the water quality and functionality of this natural stream, protect and enhance the riparian areas, and protect property from eroding banks and possible flooding. Encouraging the development of native vegetation (including shrubs and trees)--while *discouraging* actions such as grading, planting and irrigating lawns, mowing or cutting or clearing vegetation, and livestock grazing--would help preserve the functionality of this creek, protect and improve wetland vegetation, enhance slope stability, and protect property from eroding banks and possible flooding.

The "No Build/No Disturbance Zone" is depicted on the plat. Within this zone, a "buffer zone" within a minimum of 100-feet outward from each side of the North Fork of Bear Creek is protected by the following covenants (restrictions) to help avoid damage to the stream and its riparian areas, as well as enhancing these areas:

1. No building, no new roads or alteration is allowed in the buffer zone.
2. Only non-motorized access and use of the buffer zone is allowed (except for certain maintenance needs such as weed spraying).
3. Do not cut or remove live or dead vegetation, particularly shrubs and trees from the buffer zone. Wood (i.e., fallen branches, downed trees) is an important part of fish habitat and contributes significantly to overall stream health. Wood regularly causes bed scour that creates pools where fish reside to feed and seek cover. Wood also stores sediment that is used for spawning. Dead trees also function as important wildlife nesting habitat. Exception: proper use of chemicals or other methods of control (other than mowing) for noxious weeds is allowed, and planting appropriate native riparian vegetation (trees, shrubs) is allowed.
4. Do not plant lawns in the buffer zone. Leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.
5. If planting is planned for this area, the goal should be to re-establish native plant species appropriate to the site.
6. Keep livestock out of the North Fork of Bear Creek or develop off-stream watering facilities (e.g., water troughs) for livestock. Use fences if necessary to keep livestock from trampling and grazing riparian vegetation in the buffer zone.
7. It is illegal to modify the streambed or streambanks of a perennial stream without a "310" permit (Montana Natural Streambed and Land Preservation Act). Any stream crossings need to follow any and all local and/or state regulations relative to bridge/culvert construction materials/methods. Certain other actions near the river and/or creek may

require state and/or federal permit(s). Contact the Ravalli Conservation District office in Hamilton for further information.

8. In summary, allow riparian areas--the creek and its buffer zones--to remain undisturbed. Do not modify them unless such change would help return the area to a natural state.
9. These riparian covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).



## EXHIBIT A-5

Planning Department  
215 South 4<sup>th</sup> Street, Suite F  
Hamilton, MT 59840  
Phone 406-375-6530  
Fax 406-375-6531  
planning@ravallicounty.mt.gov

OG-06-10-1175

October 20, 2006

Bill Burnett  
Professional Consultants, Inc  
1713 N First St  
Hamilton, MT 59840

RE: Waiver of Floodplain Analysis for Eby Subdivision/Tallwoods Development Corp.  
Parcel #872800, Geocodes #1564-02-1-01-07-0000 & 1564-03-3-01-05-0000

Dear Mr. Burnett,

We have completed our review for a waiver of the requirement for a full floodplain analysis according to Section 3-2-13 of the Ravalli County Subdivision Regulations for the above proposed subdivision. We have determined the following:

1. The southern boundary of Proposed Lot 1 is located approximately 485 horizontal feet to the north of the North Fork of Bear Creek. An unnamed intermittent creek flows through the northwestern corner of this proposed lot.
2. North Bear Creek flows through the south and eastern portions of Proposed Lot 2. The channel banks at this location are not well defined and the channel is unconfined with a broad floodplain.
3. Dense riparian vegetation indicates the probable extent of North Bear Creek's floodplain and the unnamed creek's floodplain.
4. The estimated North Bear Creek floodplain and the unnamed creek's floodplain closely approximate the location of the "no build/no disturbance zone" identified on the preliminary plat submitted with the waiver request dated September 26, 2006.
5. A significant proportion of Proposed Lot 2 is identified as wetlands on the National Wetland Inventory by the US Fish and Wildlife Service. Additional areas outside of these mapped wetlands appear to have the hydrophytic vegetation, hydric soils and hydrology characteristic of palustrine wetlands.
6. The above details were confirmed during site visit on September 15, 2006.

Given the close proximity of the proposed residential lots to North Bear Creek and the unnamed drainage, it is strongly recommended that the lowest floor of all proposed structures and utilities be located a minimum of 2 feet above the natural grade. It is also suggested that a no build/no alteration zone be established in the riparian vegetation as identified on the preliminary plat submitted with the waiver request dated September 26, 2006.

Although the property is not located in the designated 100-year floodplain, we recommend the property owners obtain flood insurance due to the proximity of each of the creek's estimated 100-year floodplains. (The opportunity to obtain discounted flood insurance is a privilege of

the citizens of Ravalli County as standard homeowner's insurance policies do not cover flood damages.)

A wetlands delineation should be conducted to adequately identify the locations of these sensitive lands. All wetlands should be identified on the final plat and classified as a no build/no alteration zone. Additionally, a 50 foot no build zone is recommended to buffer and reduce impacts to the established wetlands. Please be advised that permits may be required by other agencies for wetland area development. It is the developer's responsibility to ensure that all permits have been legally obtained before proceeding with the proposed project.

Given the information cited above and the material presented in your application, we believe that it is reasonable to waive the requirement for a full floodplain analysis as outlined in Section 3-2-13. Consequently, your waiver request is granted for this project.

If you have any questions, please feel free to contact our office.

Sincerely,

A handwritten signature in black ink, reading "Laura Hendrix". The signature is written in a cursive, flowing style.

Laura Hendrix, CFM  
Ravalli County Floodplain Administrator

Cc: Correspondence File - General  
Renee Van Hoven, Ravalli County Senior Planner  
Floodplain Waiver File

Bill Burnett  
Professional Consultants, Inc.  
1713 N. First St.  
Hamilton, Mt. 59840  
Subject: Wildland Fire Hazard Determination



Mark Lewing  
499 Ambrose Creek Rd  
Stevensville, MT 59870

Per your request, I inspected Lot 2 of the Eby Subdivision, being the N1/2SW1/4, Section 2, T7N, R21W, on May 4, 2007 for the purpose of a Wildland Fire Hazard Determination as required by current Ravalli County subdivision regulations. This property lies within the protection district of the Victor Rural Fire District.

This eighty acre parcel is agricultural land gently sloping down to the east. The northwest half of the property is open, flood irrigated pastureland. It is divided into several grazed pastures that are crossed by numerous flood irrigation ditches. Soils are poor consisting of gravelly to cobbly, sandy loams that are droughty and require vigorous irrigation to produce forage on the higher parts of the land. However, a good 2/3rds of the eighty is wetland with a high water table. The southeastern half that shows on the plat as being within the existing treeline is actually predominately wetland. It does support a sparse timber stand consisting of second growth ponderosa pine with Engelmann spruce and an occasional Douglas fir along the North Fork of Bear Creek. The pine stand is generally mature but scattered with an occasional patch of saplings coming in. Additionally there are stands of aspen and cottonwood scattered throughout.

This property is prime wildlife habitat especially for birds. The extensive wetland areas support an almost continuous cover of willow, birch, alder, aspen and cottonwood. Excellent nesting sites abound. Numerous streamlets flow through this cover and old beaver dams provide small water impoundments for ducks, herons and other shorebirds. There are also two ponds approaching a half acre in size that are stocked with fish and support wildlife. Whitetail deer, porcupines and evidence of other small mammals were observed.

This subdivision is not within the wildland fire interface. It lies two miles from the national forest boundary and is surrounded by small agricultural operations and subdivision tracts. Prevailing winds and potential fire approach would be from the west or north. On the west boundary of the lot is the Red Crow Road; a defensible fireline. On the north are two open field, agricultural units with a narrow stringer of timber along the west half of the property; a very open stand of ponderosa pine with a short grass understory. South of the property, the North Fork of Bear Creek provides a natural firebreak from the small, ten acre tracts accessed by Chickadee Lane. And, finally, to the east is wetland and small open fields.

To complete this fire potential scenario for the lot itself, the proposed building envelope lies approximately at the center of the property. To the north and west of it is short grass pasture and some wetland, flood irrigated. To the east and south lies more than forty acres of wetland and the creek. The timber is larger diameter pine which is resistant to fire damage and would not support a crown fire in this setting. The two ponds, but

especially the one adjacent to the building site, are easily accessible for fire protection purposes.

Therefore, considering the entire afore described situation, I have determined that the wildland fire hazard to this parcel is extremely low to the point of being non existent. Continuing to manage the existing pastures and maintaining the current wetland conditions as well as a green lawn situation around the proposed dwelling will ensure that this property remains relatively free of any potential fire hazard.



MARK LEWING

Forester

May 5, 2007





United States  
Department of  
Agriculture

Forest  
Service

Bitterroot National Forest

1801 N. First  
Hamilton, MT 59840  
406-363-7100

File Code: 5400/7700/5100

Date: January 26, 2007

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JAN 26 2007

FC-07-01-102

Ms. Vanessa Perry  
Assistant Planner  
Ravalli County Planning Department  
215 South 4th Street; Suite F  
Hamilton, MT 59840

Dear Ms. Perry;

Thank you for your letter of January 23, 2007. In regards to the Eby Subdivision proposal the Bitterroot National Forest provides the following review comments:

1. This proposal will not directly impact the National Forest system users.
2. The specific proposal area is within the Victor Volunteer Rural Fire District boundary and lies outside of the Bitterroot National Forest fire protection zone. The area has been identified as a Wildland Urban Interface high risk area. The Bitterroot National Forest requests that you work closely with the State of Montana Department of Natural Resources Fire Division and the Victor Volunteer Fire District on your fire protection needs.
3. Access to this proposal is via Red Crow Road, which is a county road and does not affect the National Forest system access roads.
4. The proposal area is not located in a dam inundation area, and will not affect any of our currently permitted reservoirs on the Bitterroot National Forest.

With the increase in population and expanding homes within the Bitterroot Valley there is an increased emphasis on the access and use of the National Forest system lands. The Bitterroot National Forest appreciates the opportunity to review and comment on proposals that have a possibility of affecting our public lands. If you have any questions concerning this response, please contact Forest Lands Program Manager/Realty Specialist Roylene Gaul at 363-7157.

Sincerely,

FOR DAVID T. BULL  
Forest Supervisor



*VICTOR VOLUNTEER RURAL  
FIRE DEPARTMENT*

PO Box 243  
Victor MT 59875  
Phone: 406-642-3180  
Fax: 406-642-3448  
e-mail: victorfd@cybernet1.com

To: Professional Consultants Inc.  
Attn: Bill Burnett  
From: Tommy Dobberstein, Chief VVRFD  
Re: Eby Subdivision  
Red Crow Road, Victor, Mt  
SW ¼ Sec. 2, SE ¼ Sec. 3, T 7N, R21W

Sirs: We have reviewed your proposed subdivision on Red Crow and have determined with the building site located as is, there is not a Wildland Fire Hazard risk associated with this property.

Tommy Dobberstein



Chief  
Victor Rural Fire District

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1/27/07

